

Donald E.J. Kilmer, Jr., (SBN: 179986)  
 LAW OFFICES OF DONALD KILMER  
 A Professional Corporation  
 1645 Willow Street, Suite 150  
 San Jose, California 95125  
 Telephone: (408) 264-8489  
 Facsimile: (408) 264-8487  
 E-Mail: Don@DKLawOffice.com

Jason A. Davis [SBN: 224250]  
 Davis & Associates  
 27281 Las Ramblas, Suite 200  
 Mission Viejo, CA 92691  
 Voice: (949) 310-0817  
 Fax: (949) 288-6894  
 E-Mail: Jason@CalGunLawyers.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DOUGLAS CHURCHILL, PETER  
 LAU, THE CALGUNS  
 FOUNDATION, INC. THE SECOND  
 AMENDMENT FOUNDATION,  
 INC.,

Plaintiffs,

vs.

KAMALA HARRIS – as Attorney  
 General, CALIFORNIA  
 DEPARTMENT OF JUSTICE,  
 CITY/COUNTY OF SAN  
 FRANCISCO, and SAN FRANCISCO  
 POLICE DEPARTMENT, CITY OF  
 OAKLAND, OAKLAND POLICE  
 DEPARTMENT and Does 1 to 20,

Defendants.

**E-filing**

**CV 12 1740**

CASE NO.:

COMPLAINT AND REQUEST FOR  
 INJUNCTIVE/DECLARATORY  
 RELIEF

FEDERAL CLAIMS: SECOND, FOURTH,  
 FIFTH, and FOURTEENTH  
 AMENDMENTS OF THE UNITED STATES  
 CONSTITUTION

42 U.S.C. §§ 1983, 1988

SUPPLEMENTAL STATE LAW CLAIMS:

CONVERSION

CA PENAL CODE § 33885

**PARTIES**

1. Plaintiff DOUGLAS W. CHURCHILL is an individual who is a citizen of the United States and resident of San Francisco County.

2. Plaintiff PETER LAU is an individual who is a citizen of the United States and resident of Alameda County.
3. Plaintiff THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization incorporated under the laws of California with its principal place of business in San Carlos, California. The purposes of CGF include supporting the California firearms community by promoting education for all stakeholders about California and federal firearms laws, rights and privileges, and defending and protecting the civil rights of California gun owners. As part of CGF's mission to educate the public – and gun-owners in particular – about developments in California's firearm laws, CGF assists in the maintenance and contributes content to an internet site called Calguns.net. [<http://www.calguns.net/calgunforum/index.php>] On that website CGF informs its members and the public at large about pending civil and criminal cases, including but not limited to: arrests, convictions and appeals relating to California gun law. The website hosts forums and publishes notices that document the concerns that California gun owners have about possible arrest, prosecution and conviction for running afoul of California's vague and ambiguous firearm laws. CGF brings this action on behalf of itself and its supporters, who possess all the indicia of membership.
4. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellvue, Washtington. SAF has over 650,000 members and supporters nationwide, including California. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately owned and possess firearms, and the consequences of gun control. SAF brings this action on behalf of itself and its members.
5. Both THE CALGUNS FOUNDATION, INC., and the SECOND

1 AMENDMENT FOUNDATION, INC., spend a considerable amount of time  
2 and resources defending gun owners in court (both criminal and civil actions)  
3 and bringing public interest lawsuits to vindicate the rights of California gun  
4 owners.

5 6. Defendant KAMALA HARRIS is the Attorney General of the State of  
6 California and she is obligated to supervise her agency and comply with all  
7 statutory duties under California Law. She is charged with enforcing,  
8 interpreting and promulgating regulations regarding procedures for return of  
9 firearms pursuant to state law. CA Penal Code §§ 26590, 33850-33895.

10 7. Defendant CALIFORNIA DEPARTMENT OF JUSTICE is an agency of the  
11 State of California, headed by the Attorney General of the State, with a  
12 statutory duty to enforce, administer and interpret the law and promulgate  
13 regulations regarding the return of firearms under CA Penal Code §§ 26590,  
14 33850-33895.

15 8. Plaintiffs seek only prospective injunctive relief from the Defendants  
16 KAMALA HARRIS and the CALIFORNIA DEPARTMENT OF JUSTICE  
17 with respect to letters they issue as part of the administrative procedures set  
18 forth in CA Penal Code §§ 26590, 33850-33895.

19 9. Defendant CITY/COUNTY OF SAN FRANCISCO is a state actor located in  
20 the State of California. Defendant CITY/COUNTY OF SAN FRANCISCO is  
21 responsible for setting the policies and procedures of San Francisco Police  
22 Department, including but not limited to setting policy and conducting  
23 training and discipline of peace officers employed by Defendant with respect  
24 to the implementation of CA Penal Code §§ 26590, 33850-33895.

25 10. Defendant SAN FRANCISCO POLICE DEPARTMENT is an agent of the  
26 CITY/COUNTY OF SAN FRANCISCO.

27 11. Defendant CITY OF OAKLAND is a state actor located in the State of  
28 California. Defendant CITY OF OAKLAND is responsible for setting the



1 policies and procedures of Oakland Police Department, including but not  
 2 limited to setting policy and conducting training and discipline of peace  
 3 officers employed by Defendant with respect to the implementation of CA  
 4 Penal Code §§ 26590, 33850-33895.

5 12. Defendant OAKLAND POLICE DEPARTMENT is an agent of the CITY OF  
 6 OAKLAND.

### 7 JURISDICTION AND VENUE

8 13. This action arises under the United States Constitution, this Court also has  
 9 jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1367, 1983, 1988.

10 14. As the Plaintiffs are seeking declaratory relief, this Court has jurisdiction  
 11 over this action pursuant to 28 U.S.C. §§ 2201 and 2202.

12 15. Venue for this action is properly in this District pursuant to 28 U.S.C. § 1391.

13 16. All conditions precedent, including exhaustion of administrative remedies  
 14 where required, have been performed, have occurred, are futile or  
 15 unnecessary where the government infringes on a fundamental right.

### 16 FACTS: CHURCHILL

17  
 18 17. On or about February 4, 2011, the San Francisco District Attorney's Office  
 19 dismissed charges against DOUGLAS CHURCHILL in a case with Court  
 20 Number: 11001123. The Action Number was: CC001928, 929.

21 18. As part of the investigation in this case the San Francisco Police Department  
 22 confiscated several firearms from the DOUGLAS CHURCHILL on or about  
 23 January 11, 2011. DOUGLAS CHURCHILL was issued a receipt for the  
 24 firearms. The officer who took possession of the firearms was named  
 25 Brandenburg and his badge number is 318. The officer who witnessed the  
 26 receipt is unknown but his badge number is 2070.

27 19. After the charges were dismissed against him, DOUGLAS CHURCHILL  
 28 completed a Law Enforcement Gun Release Application pursuant to (then)

1 Penal Code § 12021.3.<sup>1</sup> This application was tendered to the Defendant  
2 CALIFORNIA DEPARTMENT OF JUSTICE.

3 20. Through the months of April and June of 2011 the Defendant CALIFORNIA  
4 DEPARTMENT OF JUSTICE approved the release of some, but not all of  
5 DOUGLAS CHURCHILL's firearms. Specifically, the letters issued by  
6 KAMALA HARRIS contain the following relevant language (w/o citations):

- 7 a. "However, this letter does not establish or prove ownership of any  
8 firearm."  
9 b. "It is your responsibility to prove that own or have a right to possess  
10 any firearm in the custody of a court or law enforcement agency that  
11 you wish to have returned to you. A court or LEA with direct access to  
12 DOJ's Automated Firearms System (AFS), is required to check AFS to  
13 determine whether the person seeking return of a firearm is listed as  
14 the owner/purchaser of the firearm(s) sought to be returned."  
15 c. "In the case of any firearm (handgun/long gun) that is recorded in AFS,  
16 the firearm can only be returned to the person who is listed in AFS as  
17 the owner/possessor of the firearm, and not to any other person."  
18 d. "However, a court or LEA may return such a handgun to a person who  
19 demonstrates that the handgun was transferred to him or her in a  
20 manner that was lawful, but was not required pursuant to Penal Code  
21 section 12077 to be recorded in DOJ's records."  
22 e. "In the case of a long gun that is not recorded in AFS, the long gun can  
23 be returned to a person who is not listed in AFS as the owner/possessor  
24 of the long gun because AFS generally does not include  
25 ownership/possession information about long guns."  
26 f. "The person seeking return of a long gun not recorded in AFS must

27  
28 <sup>1</sup> As of January 1, 2012, California has renumbered its weapons control  
statutes. The relevant codes now are: CA Penal Code §§ 26590, 33850-33895.

1 present proof of ownership, such as a sales receipt from a licensed  
 2 firearms dealer, or other bona fide evidence the long gun was sold or  
 3 transferred to him or her in compliance with state and federal law.”

4 21. This form letter, which carries the weight of the legal opinion of California  
 5 Attorney General's Office, is being interpreted by the San Francisco Police  
 6 Department as requiring gun owners to “prove up” their right to have their  
 7 personal property returned to them; even as the government admits that no  
 8 “official” records of said ownership exist for long guns and that “official”  
 9 records may not exist with respect to handguns.

10 22. Furthermore, California Evidence Code § 637 creates a presumption that a  
 11 thing possessed by a person is owned by him.

12 23. Although Defendant CITY/COUNTY OF SAN FRANCISCO has an  
 13 independent duty to interpret California law, the confusion created by the  
 14 Attorney General's form letter is contributing factor in the continuing  
 15 violation of DOUGLAS CHURCHILL's rights.

16 24. DOUGLAS CHURCHILL seeks return of the following firearms which are  
 17 his lawful property:

- 18 a. Ruger Model 10/22 – .22 Cal Rifle.
- 19 b. Remington Model 552 – .22 Cal Rifle with scope and brown gun case.
- 20 c. Marlin Model 39A – .22 Cal Rifle with scope and green case.
- 21 d. Winchester Model 37 – 20 Gauge shotgun.
- 22 e. Browning Model 12 – 12 Gauge shotgun with two barrels and brown  
 23 case.
- 24 f. Remington 12 Gauge Barrel only in black case.
- 25 g. Savage Arms – .22 Cal single shot handgun.

26 **FACTS: LAU**

27 25. PETER LAU's firearms were taken into custody by the Oakland Police  
 28 Department in connection with an investigation into his brother's suicide.



- 1 26. After completing the administrative procedures for the return of his firearms,  
 2 PETER LAU was informed that they OAKLAND POLICE DEPARTMENT  
 3 would not return one of his rifles because that department believed that the  
 4 firearm was an assault weapon under California Penal Code § 12276.1.
- 5 27. In fact, PETER LAU's firearm is NOT an assault weapon due to its lacking  
 6 the feature of a detachable magazine. The firearm in question has a "bullet  
 7 button" installed on the magazine release button which requires the use of a  
 8 tool to remove the magazine and thus if falls outside of the definition of a  
 9 California Assault Weapon.
- 10 28. PETER LAU seeks the return of his rifle.

11  
 12 **FIRST CLAIM - SECOND AMENDMENT**

- 13 29. Paragraphs 1 through 28 are incorporated by reference as if fully set forth  
 14 herein.
- 15 30. The Second Amendment to the United States Constitution provides in part  
 16 that "the Right of the People to keep and bear arms shall not be infringed."
- 17 31. Defendants KAMALA HARRIS and the CALIFORNIA DEPARTMENT OF  
 18 JUSTICE have wrongfully interpreted the law of personal property and  
 19 firearms in particular. Said wrongful interpretation is a contributing factor  
 20 in a continuing violation of Plaintiffs' Second Amendment rights. Plaintiffs  
 21 seek only declaratory/injunctive relief against these Defendants.
- 22 32. Defendants CITY/COUNTY OF SAN FRANCISCO, and SAN FRANCISCO  
 23 POLICE DEPARTMENT, CITY OF OAKLAND, OAKLAND POLICE  
 24 DEPARTMENT and Does 1 to 20 wrongful interpretation of current law and  
 25 the continuing wrongful retention of Plaintiffs' arms violates the Second  
 26 Amendment as applied to the States through the Fourteenth Amendment's  
 27 due process clause.
- 28

**SECOND CLAIM - FOURTH AMENDMENT**

33. Paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.

34. The Fourth Amendment to the United States Constitution provides in part that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

35. Plaintiffs seek no remedy against KAMALA HARRIS and the CALIFORNIA DEPARTMENT OF JUSTICE under this claim.

36. The Defendants' CITY/COUNTY OF SAN FRANCISCO, and SAN FRANCISCO POLICE DEPARTMENT, CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT and Does 1 to 20 wrongful possession of Plaintiffs' personal property has ripened into a unreasonable seizure and violates Plaintiffs' Fourth Amendment rights as applied to the States through the Fourteenth Amendment's due process clause.

**THIRD CLAIM - FIFTH AMENDMENT**

37. Paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.

38. The Fifth Amendment to the United States Constitution provides: "... nor shall private property be taken for public use, without just compensation."

39. Plaintiffs seek no remedy against KAMALA HARRIS and the CALIFORNIA DEPARTMENT OF JUSTICE under this claim.

40. Defendants' CITY/COUNTY OF SAN FRANCISCO, and SAN FRANCISCO POLICE DEPARTMENT, CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT and Does 1 to 20 continued possession of Plaintiffs' personal property amounts to a *de facto* taking without just compensation and violates Plaintiff's Fifth Amendment rights as that applied to the States through the Fourteenth Amendment due process clause.



**FOURTH CLAIM - FOURTEENTH AMENDMENT**

41. Paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.

42. The Fourteenth Amendment to the United States Constitution provides in part that: "... nor shall any State deprive any person of ... property, without due process of law."

43. Defendants KAMALA HARRIS and the CALIFORNIA DEPARTMENT OF JUSTICE have wrongfully interpreted the law of personal property and firearms in particular resulting in a violation of due process. Plaintiffs seek declaratory/injunctive relief against these Defendants.

44. Defendants CITY/COUNTY OF SAN FRANCISCO, and SAN FRANCISCO POLICE DEPARTMENT, CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT and Does 1 to 20 continued possession of Plaintiffs' personal property, after he has availed himself of the administrative processes required by law, is a deprivation of property without due process in violation of the Fourteenth Amendment.

**FIFTH CLAIM - STATE LAW: Conversion**

45. Paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.

46. Plaintiffs seek no remedy against KAMALA HARRIS and the CALIFORNIA DEPARTMENT OF JUSTICE under this claim.

47. By continuing to exercising dominion and control over Plaintiffs' lawfully owned personal property, and thus depriving him of possession, Defendants CITY/COUNTY OF SAN FRANCISCO, and SAN FRANCISCO POLICE DEPARTMENT, CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT and Does 1 to 20 have wrongfully converted said property to their use.

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**SIXTH CLAIM - STATE LAW: CALIFORNIA PENAL CODE § 33850 et seq.**

48. Paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.

49. California Penal Code § 33885 provides that: "In a proceeding for the return of a firearm seized and not returned pursuant to this chapter, where the defendant or cross-defendant is a law enforcement agency, the court shall award reasonable attorney's fees to the prevailing party."

50. Plaintiffs seek no remedy against KAMALA HARRIS and the CALIFORNIA DEPARTMENT OF JUSTICE under this claim.

51. Plaintiffs hereby seeks an award of attorney fees and costs from CITY/COUNTY OF SAN FRANCISCO, and SAN FRANCISCO POLICE DEPARTMENT, CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT and Does 1 to 20 under state law for bringing this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court will enter judgment as follows:

- A. Declaratory and injunctive relief that all Defendants must apply correct and well established legal principles for determining ownership and possession of firearms by law-abiding citizens, including but not limited to the presumptions in California Evidence Code § 637 with respect to long guns and handguns owned prior to the creation of the State's AFS system.
- B. Declaratory and injunctive relief that all Defendants must immediately participate in efforts necessary to return Plaintiffs' property.
- C. Damages – if necessary – from CITY/COUNTY OF SAN FRANCISCO, and SAN FRANCISCO POLICE DEPARTMENT, CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT and Does 1 to 20
- D. Award Plaintiffs their reasonable attorney fees and costs under 28 U.S.C. § 2412, 42 U.S.C. § 1988 and/or California Penal Code § 33885.

1 E. Such other and further relief as this Court deems just and proper.

2 Respectfully Submitted on March 30, 2012,

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4 Donald E.J. Kilmer, Jr., (SBN: 179986)  
5 Attorney for Plaintiffs

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